

United States District Court
Southern District of Texas
FILED

MAR 08 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

Miranda D. Oyler

Plaintiff,

vs.

Customs and Border Protection, Privacy and
Diversity, and U.S. Border Patrol

Defendants

} Case No.: No. M-16-010
} COMPLAINT FOR INJUNCTIVE RELIEF
} FOR VIOLATION OF 5 U.S.C. § 552
} UNDER THE FREEDOM OF
} INFORMATION ACT
} DATE: MARCH 8, 2016

1. This action is pursuant to 5 U.S.C. § 552, Freedom of Information Act (FOIA), for injunctive relief.
2. Plaintiff is employed by Customs and Border Protection, U.S. Border Patrol, Edinburg, Texas (RGV Sector), within Hidalgo County. This court has subject matter jurisdiction for this action pursuant to 5 U.S.C. § 552(B) as the records reside at the Defendants sector office at 4400 South Expressway 281, Edinburg, Texas, in Hidalgo County, and the Plaintiff resides within Hidalgo County, Texas.
3. On December 22, 2015, Plaintiff Miranda D. Oyler filed a request under FOIA and was issued an official tracking number (CBP-OBP-2016-012633). See Exhibit A
4. 5 U.S.C. § 552 (6)(A) requires agencies to determine within 20 working days after receipt of the request, whether to comply and to immediately notify the person making the request of such determination. Although the agency, in unusual circumstances, is afforded an extension under (6)(A)(B)(i), such extensions must be in writing by the agency to the requestor and must set forth the circumstances and include the date on which a determination is expected to be dispatched. The agency may not request an extension that exceeds an additional 10 working days.
5. The Defendants have failed to provide the records the Plaintiff is otherwise entitled to in accordance with 5 U.S.C. § 552(6)(A). The Defendants have not requested an extension,

1 nor requested the Plaintiff to limit the scope of her request as required under
2 5 U.S.C § 552(6)(A)(B)(i) and (C)(i)(ii). As the former Records Manager for the
3 U.S. Border Patrol, Rio Grande Valley Sector (RGV), Plaintiff is aware that the records
4 she requested should be maintained in the official electronic records management system
5 known as Laserfiche, under the purview of the U.S. Border Patrol, RGV. The system has
6 been in use since 2002 and was approved in approximately 2009 by then Chief Patrol
7 Agent Ronald D. Vitiello as the official records system for the RGV Sector. The records
8 the plaintiff seeks, by regulation, should be found in the Laserfiche system and can be
9 located by a simple electronic search. In the event the Defendants have used non-
10 approved means to maintain or transfer records, the Plaintiff has also requested records
11 from government email accounts. An audit trail from the Laserfiche system was
12 requested to determine if records have been altered or removed. Plaintiff was specific in
13 her request, and as such, the Defendants have not requested the Plaintiff limit the scope
14 of her request.

15 6. The Plaintiff is sympathetic to recent weather related issues that may have caused a delay
16 in the Defendants responding within the required 20 day deadline, however, the
17 Defendants have had more than 45 days to respond and have failed to do so. It should
18 also be noted that the Defendants have not requested an extension to their deadline of
19 January 22, 2016.

20 7. Plaintiff was awarded a settlement under the Merit System Protection Board due to a
21 Whistleblower retaliation claim. The Plaintiff is concerned that the officials of the U.S.
22 Border Patrol, RGV Sector will attempt to illegally hold, destroy, or alter the requested
23 information.

24 **CAUSE OF ACTION**
25

26 ***Violation of Freedom of Information Act for Wrongful Withholding of Records***
27
28

- 1 8. Defendants have wrongfully withheld the release of records requested by Plaintiff by
- 2 failing to abide by the statutory time limit for the processing of FOIA requests under
- 3 5 U.S.C. § 552 (a)(6)(C)(i).
- 4 9. Plaintiff is entitled to injunctive relief concerning the release and disclosure of the
- 5 requested documentation pursuant to 5 U.S.C. § (a)(4)(B).

6 **REQUESTED RELIEF**

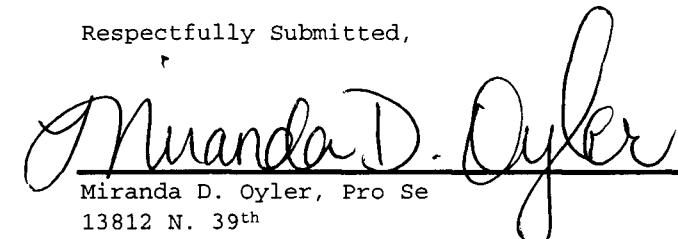
7 WHEREFORE, Plaintiff prays that this court:

- 8 1. Instructs Defendants to immediately release all of the requested documents in their
- 9 entirety;
- 10 2. In accordance with 5 U.S. C. § 552(F)(i) I ask the court to ensure an investigation is
- 11 conducted in the event it is determined that Agency personnel acted arbitrarily or
- 12 capriciously with respect to the withholding, destroying, or mishandling of records; and
- 13 3. Award Plaintiff the cost of filing fees incurred in this action as permitted under
- 14 5 U.S.C. §552 (a)(4)(E)(i).

15

16 Respectfully Submitted,

17

18 
19 Miranda D. Oyler, Pro Se
20 13812 N. 39th
21 Edinburg, Texas 78541
22 (956) 455-8006
23 miranda.d.oyler@gmail.com

1300 Pennsylvania Ave
RRB 6.5E
Washington, DC 20229

Miranda D. Oyler
Customs and Border Protection
13812 N. 39th
Edinburg, TX 78541

December 22, 2015

Dear Mrs. Miranda D. Oyler,

Miranda D. Oyler

13812 N. 39th Edinburg TX 78541

Dear Miranda D. Oyler:

This automated notice acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) received on 12/22/2015. Please use the following unique FOIA tracking number CBP-OBP-2016-012633 to track the status of your request. If you have not already done so, you must create a FOIAonline account at <https://foiaonline.regulations.gov>. This is the only method available to check the status of your pending FOIA request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations outlined on the DHS website, http://www.dhs.gov/xfoia/editorial_0579.shtm. By submitting your request, you have agreed to pay up to \$25.00 in applicable processing fees, if any fees associated with your request exceed this amount, CBP shall contact you; however, the first 100 pages are free.

CBP's FOIA Division is working hard to reduce the amount of time necessary to respond to FOIA requests. Currently, the average time to process a FOIA request related to "travel/border incidents" is a minimum of 12 months. We truly appreciate your continued patience.

For additional information please consult CBP FOIA website please click on [FOIA Act Resources](#) or visit <http://www.cbp.gov/site-policy-notices/foia>.

Thank you,

Sincerely,

Shannon Scott
U.S. Customs and Border Protection

Request Details

Tracking Number : CBP-2016-012633

Submitted	Evaluation	Assignment Processing
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Contact Information

D. Oyler	Full Name : Mrs. Closed Miranda	Mailing Location : United States/U.S. Territories
Border Protection	Organization : Customs and	Address Line 1 : 13812 N. 39th
	Email Address : mandoybler@gmail.com	Address Line 2 :
	Phone Number : 956-455 -8006	City : Edinburg
		State/Province : Texas
		Zip Code/Postal Code : 78541
	Fax Number :	

Request Information

Responsive Records	Agency : Non-Traveler	Request Phase : Processing
	Will Pay Up To : \$25.00	Request Track : Simple
	Date Submitted : 12/22/2015	Final Disposition : Undetermined
	Estimated Date of Completion : 01/22/2016	

Description :

1998/2000

Any and all records including, but not limited to emails, notes, and documents related to all awards (cash, time off awards, etc.) SUBMITTED BY OR AWARDED TO any employee assigned, detailed or directly assisting the U.S. Border Patrol, Rio Grande Valley Sector (RGV), Integrated Planning Team (IPT) and/or RGV Operation Stonegarden Team, from October 2014 to December 22, 2015. The electronic system used by RGV is searchable and includes sticky notes that are printable and are therefore subject to FOIA. The system

Request a Fee Waiver

Made Request ? No

Request Expedited Handling

Made Request ? No

Supporting Files

Attached Files :

No attachments were previously added.

Payments

No payments to display.

Invoice

Total Amount Billed : \$0.00

Date Sent :

No invoice has been added.

Correspondence with Requester

Subject	From	Date	Detail
CBP-OBP-2016-012633 - Acknowledgement Letter	Shannon Scott	2015-12-22	
FOIA Request CBP-2016-012633 Submitted		2015-12-22	

This message is to confirm your request submission to the FOIAonline application:

View Request. Request information is as follows:

- Tracking Number: CBP-2016-012633
- Requester Name: Miranda D. Oyler
- Date Submitted: 12/22/2015
- Request Status: Submitted
- Description: Any and all records including, but not limited to emails, notes, and documents related to all awards (cash, time off awards, etc.) SUBMITTED BY OR AWARDED TO any employee assigned, detailed or directly assisting the U.S. Border Patrol, Rio Grande Valley Sector (RGV), Integrated Planning Team (IPT)

Subject	From	Date	Detail
and/or RGV Operation Stonegarden Team, from October 2014 to December 22, 2015. The electronic system used by RGV is searchable and includes sticky notes that are printable and are therefore subject to FOIA. The system allows for document retrieval, so minimal time will be spent on this portion of the request. I am requesting that all documents retrieved from this system include the Laserfiche Sticky notes. I am also requesting that an audit trail be performed to ensure the notes have not been altered or deleted after my request became known. The audit trail is also printable. I understand that the names of the recipients will be redacted, I am simply asking for the forms and or memoranda that was submitted to request the awards as well as the documentation provided to our local HR showing the awards that were approved. This could be a locally created form, an official DHS, CBP, or OBP form, an email, or a memorandum. I am requesting emails related to the above subject. The emails may have been generated or received by the following officials: Javier Resendez, Andres Caballero, Jose R. Villarreal, Robert M. Duff, Juan Salinas, Raul Ortiz, and local WFM employees. This is not limiting my request, I am providing you a search starting point. I am requesting that the emails be pulled from the servers in Virginia and that employees are not asked to provide the emails. This is to ensure emails are not inadvertently left out. If you have any additional questions, please contact me and allow an opportunity for me to respond rather than closing my case. Because the information requested could be used in my MSPB case, I request an official response within the required 20 work days.			

Released Records

No records have been released.